

Supreme Court, U. S.

FILED

JAN 12 1978

MICHAEL RODAK, JR., CLERK

**In The Supreme Court of The United States**

OCTOBER TERM, 1977

---

No. 77-628

---

ROBERT T. MAGILL, et al.,

*Petitioners,*

*v.*

DENNIS M. LYNCH, et al.,

*Respondents.*

---

**RESPONSE TO PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE FIRST CIRCUIT**

---

MOSES KANDO

City Solicitor

City Hall

Pawtucket, Rhode Island 02860

WILLIAM F. McMAHON

McMahon & McMahon

1144 Howard Building

Providence, Rhode Island 02903

*Attorneys for Respondents*

---

**TABLE OF CONTENTS**

	<i>Page</i>
QUESTION PRESENTED .....	2
. STATEMENT OF THE CASE .....	2
REASONS FOR DENYING THE WRIT .....	3
CONCLUSION .....	6

**In The Supreme Court of The United States**

OCTOBER TERM, 1977

---

No. 77-628

---

ROBERT T. MAGILL, et al.,  
*Petitioners,*

*v.*

DENNIS M. LYNCH, et al.,  
*Respondents.*

---

**RESPONSE TO PETITION FOR A WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE FIRST CIRCUIT**

---

Respondents respectfully submit that the petition for writ of certiorari ought not to be granted because the question presented has been conclusively determined by the decisions of this Court in *Civil Service Commission v. National Association of Letter Carriers*, 413 U.S. 548 (1973) and *Broadrick v. Oklahoma*, 413 U.S. 601 (1973). In so submitting, Respondents respectfully dispute Petitioners' statement of the question presented. Additionally, Respondents submit that Petitioners' statement of the case omits those factors that led the Court of Appeals to conclude that the charter provision in question was constitutional.

### QUESTION PRESENTED

Can a city charter constitutionally prohibit its employees from becoming candidates in its own elections which though nominally nonpartisan are, in operation and effect, significantly partisan.

### STATEMENT OF THE CASE

It is respectfully submitted that the Statement of the Case in the Petition for A Writ of Certiorari does not include those factual elements upon which the Court of Appeals principally relied for its conclusion that the activities proscribed by the city charter were partisan activities. Petitioners, in their Statement of the Case, recite the provisions of the city charter regarding absence of party designation on the ballot. The Court of Appeals, after taking note of those charter provisions, examined the record to determine the manner in which elections in the City of Pawtucket, Rhode Island, were conducted. It concluded that, notwithstanding the nominal "non-partisanship" of the elections, the participation and influence of political parties was such that partisan politics in fact dominates the municipal electoral process.

In its opinion, at page 4, the Court of Appeals set forth its findings with respect to the character of the municipal elections in the following terms:

"The stipulations of the parties and uncontradicted testimony presented by the defendants paint this picture of elections in Pawtucket. The city has two political parties, Democratic and Republican. These parties regularly endorse candidates in the primary and general elections. The endorsements are frequently solicited by candidates at party meetings; and the Democratic

endorsement in particular, is highly prized. Plaintiff Magill himself appeared at one Democratic endorsement meeting, where he urged those present to support him, though he did not formally request an endorsement. For the past decade, the chairman of the city's Democratic committee has been the mayor. At the last election he was opposed by the chairman of the city's Republican committee, as well as by plaintiff Magill. Many regular Democratic workers who serve in partisan statewide campaigns also give aid to endorsed Democratic candidates in the city elections. The 1975 campaign illustrates how pervasive is the influence of political parties on city elections. Twelve officials were to be elected in that year: a mayor, three councilmen-at-large, two school committee members, and six councilmen. Originally, thirty candidates were nominated for these posts. Only twelve of the thirty were endorsed by the Democratic committee. All twelve survived the primary, and ten were ultimately elected. Every successful candidate — except one, who was not endorsed by the Democrats — had advertised his endorsement or political affiliation in the city's newspaper."

Thus, the Court of Appeals decided that the charter provisions in question prohibited city employees from becoming candidates in partisan elections (although conducted with non-partisan ballots) and that, therefore, the constitutional considerations enumerated by this Court in *Letter Carriers, supra*, governed the case at bar.

### REASONS FOR DENYING THE WRIT

The question presented by this case, in the light of the factual findings supported by uncontradicted evidence, was



decided by this Court in *Letter Carrier, supra*, and *Broadrick, supra*. The petition for a writ of certiorari rests on the proposition that the activities proscribed by the city charter in this case were non-partisan activities and, thus, that the conclusion of the Court of Appeals was outside the ambit of the constitutional principles enunciated in *Letter Carriers, supra*, and *Broadrick, supra*. That proposition, however, ignores the explicit findings of the Court of Appeals that the proscribed activities, while designated as "non-partisan," were conducted in a context heavily dominated by partisan party politics.

Since the Court of Appeals found that the municipal elections at issue in this case were heavily influenced by the activities of political parties, all of the policy considerations enumerated by this Court in *Letter Carriers, supra*, as justification for the limitation on political activities of public employees sustain the charter provisions in the case at bar. It, therefore, is unnecessary to reach the question (briefed and argued by Respondents in the Court of Appeals) whether "partisanship" in the context of *Letter Carriers, supra*, *Broadrick, supra*, and *United Public Workers (C.I.O.) v. Mitchell*, 330 U.S. 75 (1947) means "party related." Both the Court of Appeals and the District Court in this case held, in effect, that the principles of *Letter Carriers, supra*, and *Broadrick, supra*, applied only to elections in which the political parties played a significant role. Respondents disputed such a reading of *Letter Carriers* and *Broadrick*, contending that this Court's use of the term "partisan" in the present constitutional context is not necessarily confined to activities associated with political parties. See *Greer, Commander, Fort Dix Military Reservation, et al v. Spock, et al*, 424 U.S. 828 (1976). At the same time, however, the resolution of the question concerning the definition of

partisanship is not presented for review by the instant petition for a writ of certiorari because of the factual finding that the elections at issue in this case were in fact dominated by the influence of the major political parties.

It should be noted that most of the political activities prohibited by the statutes at issue in *Letter Carriers* and *Broadrick* involved activities in governmental elections outside the government by which the employee was employed. The definition of partisan activity contained in 5 U.S.C. Sec. 7326 of the "Hatch Act" effectively excludes federal employees from all federal elections even if the employee seeks to become an independent candidate unaffiliated with a major political party. Accordingly, the prohibitions sustained in *Letter Carriers* related principally to political participation in non-federal elections. The same observation applies equally to the statutes upheld in *Broadrick*. In the case at bar, however, an employee runs against his own elected superior in an election for office in his own government. It is respectfully submitted that this situation presents the purest application of the policy considerations which justified the imposition of restrictions in *Letter Carriers*. Nevertheless, this question also is not properly presented for review by the instant petition because of the factual findings described above.

The instant petition for a writ of certiorari does not present the question whether non-partisan political activity by public employees can constitutionally be prohibited. Rather, it presents the question whether a government may prevent its employees from participating in its own elections which, though partially non-partisan, are dominated by partisan party politics. This question was decided by this Court in *Letter Carriers, supra*, and *Broadrick, supra*.

**CONCLUSION**

The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

MOSES KANDO

City Solicitor

City Hall

Pawtucket, Rhode Island 02860

WILLIAM F. McMAHON

McMahon & McMahon

1144 Howard Building

Providence, Rhode Island 02903

*Attorneys for Respondents*